

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY LLOYD,

Plaintiff,

v.

SHAWN BUZELL, et al.,

Defendants.

CASE NO. C19-6239 BHS

ORDER

THIS MATTER is before the Court on pro se plaintiff Larry Lloyd's Motion re Ineffective Assistance of Counsel, Dkt. 124; Lloyd's Motion for Leave to Appeal *in forma pauperis*, Dkt. 128; and Lloyd's Motion for Transcripts at government expense, Dkt. 131.

In 2018, Lloyd was a pretrial detainee at the Kitsap County Jail. He alleges that when he got into an altercation with another inmate, Defendants Shawn Buzzell, Pascual Rocha, and Keith Hall used excessive force to control him, violating his Fourteenth Amendment rights. He sued in 2019, Dkt. 1, and Magistrate Judge Christel ultimately appointed counsel. Dkts. 93 and 96. Defendants sought summary judgment on all Lloyd's claims, arguing there was no evidence in support of them, and that they were entitled to

1 qualified immunity in any event. Dkt. 78. Judge Christel recommended granting the
2 motion, Dkt. 119, and this Court adopted his Report and Recommendation (“R&R”) and
3 dismissed the case with prejudice, Dkt. 120 at 2. It also adopted the R&R’s
4 recommendation that the Court revoke Lloyd’s *in forma pauperis* status for purposes of
5 any appeal. *Id.* On March 29, 2022, the Court entered a Judgment and closed the case.
6 Dkt. 121.

7 Two months later, Lloyd sought an extension of time for filing an appeal of the
8 Court’s Judgment, arguing that his court-appointed counsel had failed to timely do so.
9 Dkt. 122. The Court granted that motion, Dkt. 123, and Lloyd filed his Notice of Appeal,
10 Dkt. 125. His attorney then withdrew. Dkts. 127 and 132. The Ninth Circuit referred
11 Lloyd’s Motion to Appeal *in forma pauperis* to this Court. Dkt. 128.

12 The issues are addressed in turn.

13 Lloyd’s “Motion re Ineffective Assistance,” Dkt. 124, now asks the Court to
14 permit him to file objections to the Magistrate Judge’s R&R, arguing that his attorney
15 failed to do so. The Court already granted Lloyd relief based on his attorney’s alleged
16 failure to timely appeal the Court’s judgment, and Lloyd has attempted to take advantage
17 of that opportunity by filing a notice of appeal. The Court will not re-visit the underlying
18 Order and Judgment dismissing his claims, for the reasons articulated in the R&R. Any
19 dispute over the quality of his attorneys’ representation is a matter between him and
20 them. The Motion for Leave to file objections at this late date, Dkt. 124, is DENIED.

21 Nor will the Court reconsider its determination that Lloyd is not entitled to appeal
22 *in forma pauperis*. Lloyd has established that he is indigent, but as the Magistrate Judge’s

1 R&R concluded, he has not established that he is seeking to appeal in good faith under 28
2 U.S.C. § 1915(a)(3). “An appeal may not be taken *in forma pauperis* if the trial court
3 certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The
4 determination whether a party can proceed *in forma pauperis* is a “matter within the
5 discretion of the trial court.” *Weller v. Dickinson*, 314 F.2d 598, 600 (9th Cir. 1963). The
6 Court determines that an appeal would be frivolous. Generally, an issue is not frivolous if
7 it has an “arguable basis either in law or in fact.” *See Neitzke v. Williams*, 490 U.S. 319,
8 325 (1989). Lloyd has not made such a showing, particularly as to the defendants’ claim
9 of qualified immunity, and the evidence of the alleged excessive force is lacking in any
10 event. Lloyd’s recent application for leave to proceed *in forma pauperis* does not
11 persuade the Court that it or the Magistrate Judge wrongly decided the issue the first
12 time. The Ninth Circuit may view the issue differently, as always. Lloyd’s renewed
13 Motion for Leave to proceed *in forma pauperis* is DENIED.

14 Finally, Lloyd’s Motion for Transcripts, Dkt. 131, seeks copies of 31 different
15 pleadings, motions, declarations, responses, replies, and Orders filed in the case. He cites
16 28 U.S.C. § 753(f), which relates to transcripts of court hearings from a court reporter.
17 This case was dismissed on summary judgment; there were no hearings and there are no
18 transcripts of any in-court proceedings. Lloyd’s Motion for Transcripts from a court
19 reporter is therefore DENIED as moot. The Clerk’s Office charges \$.50 per page for
20 paper copies of documents in its electronic file. Lloyd might ask his former counsel for
21 copies of his file, to which he has a right. His request for copies at government expense
22 when he is not proceeding *in forma pauperis* is DENIED.

1 The case remains closed.

2 IT IS SO ORDERED.

3 Dated this 11th day of August, 2022.

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6 BENJAMIN H. SETTLE
United States District Judge